IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
CHRISTOPHER RITTER	:	No. 98-0131-01

MEMORANDUM AND ORDER

HUTTON, J. April 11, 2002

Currently before the Court is Petitioner Christopher Ritter's Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255 (Docket No. 152), the Government's Response to Ritter's Petition to Vacate, Set Aside or Correct his Sentence Pursuant to § 2255 (Docket No. 167), Petitioner's Objections to Government's Opposition to His §2255 Habeas Corpus Petition (Docket No. 175), Petitioner's First Supplement to His Motion Under §2255 (Docket No. 176), the Government's Response to Petitioner's Supplement to His §2255 Petition (Docket No. 187), Petitioner's Objections to Government's Opposition to His Motion to Supplement His §2255 Petition (Docket No. 191), and Petitioner's Second Supplement to His Motion Under §2255 (Docket No. 190). For the following reasons, the Court denies Petitioner the relief sought.

I. BACKGROUND

On March 24, 1998, a Federal Grand Jury in the Eastern District of Pennsylvania returned an Indictment which charged

Christopher Ritter with the following crimes: conspiracy to commit Hobbs Act Robbery (18 U.S.C. §1951) (Count 1); conspiracy to commit interstate transportation of stolen property (18 U.S.C. §371) (Count 2); interstate transportation of stolen property (18 U.S.C. §2314) (Counts 3, 8 and 10); interference with commerce by robbery (18 U.S.C. §1951) (Counts 4, 7 and 9); and use of a gun during a crime of violence (18 U.S.C. §924(c)) (Count 5).

On September 23, 1998, Petitioner appeared with retained counsel, Marc I. Rickles, before this Court and pled guilty to all Counts. On March 4, 1999, Petitioner was sentenced by this Court to 196 months imprisonment and 3 years supervised release. Petitioner was also ordered to pay $443,130.00 in restitution and a $900.00 assessment fine. Appeal was taken to the United States Court of Appeals for the Third Circuit, who affirmed this Court's sentence in an unpublished opinion on November 10, 1999.

On February 13, 2001, Petitioner filed the instant Motion pursuant to 28 U.S.C. § 2255 raising the following grounds for relief: 1) Petitioner alleges that his guilty plea was not knowing, intelligent, or voluntary due to the ineffective assistance of counsel; 2) Petitioner alleges insufficiency of the evidence regarding his state of mind in relation to his aiding and abetting the conspiracy; 3) Petitioner's receipt of stolen merchandise did not have a substantial effect on interstate commerce; 4) Petitioner's sentence was improperly enhanced for use of the same

gun that formed the basis of his conviction under 18 U.S.C. §924(c); 5) this Court did not have subject matter jurisdiction over Petitioner's case; and 6) ineffective assistance of counsel at sentencing. Moreover, on August 17, 2001, Petitioner filed his first supplement to his Motion pursuant to 28 U.S.C. § 2255, claiming that the victims suffered no financial loss and asking the Court to rescind the restitution order. On March 18, 2002, Petitioner filed his second supplement to his Motion pursuant to 28 U.S.C. § 2255, arguing insufficiency of the evidence to convict him under 18 U.S.C. §924(c) (Count 5). The Court now considers these filings.

II. LEGAL STANDARD

A prisoner who is in custody pursuant to a sentence imposed by a federal court who believes "that the sentence was imposed in violation of the Constitution or laws of the United States, . . . or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. § 2255 (West 2001); see also Daniels v. U.S., 532 U.S. 374, 377, 121 S.Ct. 1578, 149 L.Ed.2d 590 (2001). The district court is given discretion in determining whether to hold an evidentiary hearing on a petitioner's motion under section 2255. See Gov't of the Virgin Islands v. Forte, 865 F.2d 59, 62 (3d Cir. 1989). In exercising that discretion, the court must determine whether the petitioner's claims, if proven, would entitle him to

relief and then consider whether an evidentiary hearing is needed to determine the truth of the allegations. See Gov't of the Virgin Islands v. Weatherwax, 20 F.3d 572, 574 (3d Cir. 1994).

Accordingly, a district court may summarily dismiss a motion brought under section 2255 without a hearing where the "motion, files, and records, 'show conclusively that the movant is not entitled to relief.'" U.S. v. Nahodil, 36 F.3d 323, 326 (3d Cir. 1994) (quoting U.S. v. Day, 969 F.2d 39, 41-42 (3d Cir. 1992)); Forte, 865 F.2d at 62. For the reasons outlined below, the Court finds that there is no need in the instant case for an evidentiary hearing because the evidence of record conclusively demonstrates that Petitioner is not entitled to the relief sought.

III. DISCUSSION

A. Ineffective Assistance of Counsel and the Voluntariness of Petitioner's Guilty Plea

Petitioner alleges several instances of ineffective assistance of counsel and avers that his plea of guilty to all counts on September 23, 1998 was not knowing, voluntary or intelligent. Specifically, Petitioner alleges that his counsel, Marc Rickles, advised Petitioner that he would receive no more than five years of imprisonment if he pled guilty. Petitioner claims that, but for counsel's erroneous advice regarding the sentence he would receive upon a plea of guilty, Petitioner would have demanded a trial.

Moreover, Petitioner makes brief reference to four other alleges instances of ineffective assistance of counsel: 1) failure

to object to the Presentence Investigation Report's (PSI) computation of Petitioner's Base Offense Level (BOL); 2) failure to request an adjournment of sentencing pending transcription of the plea record; 3) failure to challenge the PSI's Section 3A1.1(b) adjustment based on the age of the victim; and 4) failure to request a downward departure for mitigating role.

The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." See North Carolina v. Alford, 400 U.S. 25, 31 (1970). The Strickland two-part test for ineffectiveness of counsel applies to claims arising out of the plea process. See Hill v. Lockhard, 474 U.S. 52, 57 (1985).

The Sixth Amendment to the United States Constitution provides that a criminal defendant is entitled to reasonably effective assistance of counsel. See U.S. Const. amend. VI. A petitioner's claim of ineffective assistance of counsel is governed by the standard promulgated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). In Strickland, the Supreme Court stated that an ineffective assistance of counsel claim requires the petitioner to show that their counsel's performance was defective and that the deficient performance prejudiced the defense. See id.; see also Meyers v. Gillis, 142 F.3d 664, 666 (3d Cir. 1998) (stating that to

be entitled to habeas relief, the defendant must establish ineffectiveness as well as resultant prejudice). Counsel's performance is to be measured against a standard of reasonableness. In analyzing that performance, the court must make "every effort . . . to eliminate the distorting effects of hindsight," and determine whether "in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." See Strickland, 466 U.S. at 690.

Once it is determined that counsel's performance was deficient, the court must determine if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." Id. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. Only after both prongs of the analysis have been met will the petitioner have asserted a successful ineffective assistance of counsel claim. Moreover, "judicial scrutiny of an attorney's competence is highly deferential." Diggs v. Owens, 833 F.2d 439, 444-45 (3d Cir. 1987). "[A]n attorney is presumed to possess skill and knowledge in sufficient degree to preserve the reliability of the adversarial process and afford his client the benefit of a fair trial." Id. at 445. "Nevertheless, if 'from counsel's perspective at the time of the alleged error and in light of all the circumstances' it appears

that counsel's actions were unreasonable, the court must consider whether that error had a prejudicial effect on the judgment." Id. (citation omitted).

Regarding Petitioner's argument that his plea was not knowing or voluntary, the Court need not address whether counsel's advise was indeed deficient because, even if it was, Petitioner is unable to satisfy the prejudice prong. At the September 23, 1998 plea hearing, the Court advised Petitioner that the maximum sentence was 120 years. Tr. At 7. Petitioner acknowledged his understanding of this maximum sentence. Id. The Court asked Petitioner if he understood the guideline range, and Petitioner answered "I believe 20 to 25 years and a five year mandatory." Id. Petitioner's counsel stated the range more precisely: "I have the category would fall between 235 and 293 months." Id. Government counsel confirmed this. Id. at 8. The Court then asked Petitioner if the Court had authority to sentence Petitioner to less than 235 months. Id. Petitioner answered "No, no, Your Honor." Id. Petitioner then restated his desire to plead guilty. Id. Therefore, based on the dialogue that transpired during the September 23, 1998 plea hearing, Petitioner cannot claim that his plea of guilty was not knowing or voluntary.

Moreover, Petitioner's remaining allegations of ineffective assistance of counsel are without merit. In his Motion, Petitioner makes reference to counsel's "failure to request an adjournment of

sentencing pending transcription of the plea record," Pet.'s Mot. at 17, but does not provide any support for this allegation or explain how Petitioner was harmed by it. Similarly, Petitioner makes passing reference to counsel's failure to challenge Petitioner's sentencing enhancement based on the victim's age and counsel's failure to request a downward adjustment for mitigating role. Petitioner, however, does not elaborate on these allegations or provide any evidentiary support as to how counsel's performance was deficient or how Petitioner was prejudiced by counsel's performance. Accordingly, Petitioner is not entitled to habeas relief based on ineffective assistance of counsel.

B. Sufficiency of the Evidence Regarding Petitioner's State of Mind in Aiding and Abetting the Conspiracy

Petitioner claims that there was no evidence that he had any intent to facilitate the commission of the robberies, no evidence of guilty knowledge, and no evidence that he assisted or participated in the offense. Citing United States v. Morrow, 977 F.2d 222, 231 (6th Cir. 1992), Petitioner claims that the Government did not prove that Petitioner knew to a "practical certainty" that his accomplice Champney was carrying a gun.

It is well-settled, however, that a defendant's properly counseled and entered plea of guilty admits all of the elements of a formal criminal charge and waives a multitude of federal constitutional rights, including the privilege against compulsory self-incrimination, the right to confront one's accusers, the right

to a jury trial, the right to a speedy trial, and the right to require the prosecutor to prove the crime beyond a reasonable doubt. Tollett v. Henderson, 411 U.S. 258, 267 (1973) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."); Miller v. Angliker, 848 F.2d 1312, 1319 (2d Cir.) ("When a defendant pleads guilty, he waives ... the right to confront his accusers and the privilege against compulsory self-incrimination."), cert. denied, 488 U.S. 890 (1988); United States v. Manni, 810 F.2d 80, 84 (6th Cir.1987) (defendant's argument regarding the sufficiency of the evidence that might have been produced at trial was waived by his guilty plea); United States v. Freed, 688 F.2d 24, 25-26 (6th Cir.1982) (defendant who pleaded nolo contendere could not later argue that the evidence was insufficient to support a conviction).

Moreover, ample evidence existed regarding Petitioner's knowledge of the conspiracy. At the September 23, 1998 plea hearing, the Government demonstrated Petitioner's contact with co-conspirators (Tr. at 18), Petitioner's possession of the stolen property (Tr. at 17-18), Petitioner's admission to police officers that he knew the property had been stolen (Tr. at 18), and Petitioner's admission that he knew the stolen property had been

obtained through violence (Tr. at 18). The Government also demonstrated the fact that Petitioner met with co-defendant Blickley before the robberies and burglaries to identify the victims (Tr. at 19-20), and Petitioner's actual receipt of the stolen property (Tr. at 20-22). Petitioner was asked by the Court if he agreed with the Government's proffer of the facts, and Petitioner responded "Yes" (Tr. at 25). Petitioner, therefore, cannot claim that there was insufficient evidence of his knowledge of the conspiracy.

C. Petitioner's Receipt of Stolen Property and its Affect on Interstate Commerce

Petitioner contends that the Government failed to demonstrate that Petitioner's criminal acts had a nexus to interstate commerce. However, the Record reflects that the Government's evidence of an interstate commerce nexus was substantial. At the September 23, 1998 Plea Hearing, the Government demonstrated that the victims of Petitioner's crimes "were all involved as dealers or collectors of antiques and coins and jewelry, and ... their customers were customers inside and outside of their respective states," Tr. at 17, and that some of the charged robberies and burglaries occurred in New Jersey, and the stolen property was brought to Petitioner in Pennsylvania, who "fenced" it both inside and outside of Pennsylvania. Tr. at 17.

The Government demonstrated additional evidence of a nexus to interstate commerce during the September 23, 1998 Plea Hearing.

Petitioner had identified the victims to Blickley, who carried out the robberies and burglaries both inside and outside of Pennsylvania. Tr. at 19. Petitioner planned the robbery of Martin Brothers Auction House in Washington Township, New Jersey and received some of the stolen property in Pennsylvania. Tr. at 20. Petitioner planned the robbery of two Pennsylvania coin dealers who operate in interstate commerce. Tr. at 20-21. Petitioner planned robberies and burglaries in Moorestown, New Jersey, Lambertville, New Jersey and Voorhees, New Jersey, and received the stolen property in Pennsylvania. Tr. at 22-25. Petitioner agreed to all of these facts. Tr. at 25. The Government, therefore, proved the interstate nexus element.

D. The Court's Sentencing Guideline Calculation

Petitioner contends that the Sentencing Guidelines calculation double-counted his use of a firearm because he was convicted of a violation of 18 U.S.C. §924(c). Petitioner, however, misunderstands the calculation by the U.S. Probation Office. The Probation Office grouped the Section 924(c) violation (Count 5) with the related violations (Counts 1 and 4). See PSI at p. 10. Consequentially, the Section 2B3.1(b)(2)(c) adjustment was not added. See PSI at ¶40, p. 10). The Sentencing Guidelines calculation, therefore, was correct.

E. This Court's Subject Matter Jurisdiction Over The Case

Petitioner, in his Motion, claims that this Court did not have

subject matter jurisdiction over the instant case. Petitioner essentially reargues that the crimes he committed did not have a nexus to interstate commerce. However, as was discussed above, the Government demonstrated the nexus to interstate commerce and Petitioner agreed to the Government's recitation of the facts. Tr. at 25. This Court had subject matter jurisdiction pursuant to 18 U.S.C. §3231.

F. The Court's Restitution Order

On March 4, 1999, this Court ordered Petitioner to pay $443,130.00 in restitution. See Tr. at 133-134. Petitioner contends that this Court should rescind its restitution order, arguing that there was no financial loss suffered by the victims. Petitioner, however, did not object to the Court's restitution order at sentencing. Petitioner appealed his sentence, including the restitution order, and the Court's Order was affirmed by the Third Circuit in an unpublished opinion dated November 10, 1999.

The Court's restitution order was based on the financial loss suffered by the victims as calculated by the United States Probation Office and included in the PSI. The Court adopted this portion of the PSI at the Sentencing Hearing on March 4, 1999. The Court offered Petitioner the opportunity to object to the PSI's restitution recommendation, and Petitioner failed to do so. Moreover, Petitioner has not provided this Court with any support for his argument that the PSI's restitution calculation was

incorrect. The Court's restitution order, therefore, will not be rescinded.

IV. CONCLUSION

For the foregoing reasons, the Court declines to grant Petitioner the relief sought. No evidentiary hearing is necessary since the records before this Court establish that Petitioner is not entitled to relief under section 2255. Moreover, since Petitioner has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), no certificate of appealability will issue.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
CHRISTOPHER RITTER	:	No. 98-0131-01

ORDER

AND NOW, this 11th day of April, 2002, upon consideration of Petitioner Christopher Ritter's Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255 (Docket No. 152), the Government's Response to Ritter's Petition to Vacate, Set Aside or Correct his Sentence Pursuant to § 2255 (Docket No. 167), Petitioner's Objections to Government's Opposition to His §2255 Habeas Corpus Petition (Docket No. 175), Petitioner's First Supplement to His Motion Under §2255 (Docket No. 176), the Government's Response to Petitioner's Supplement to His §2255 Petition (Docket No. 187), Petitioner's Objections to Government's Opposition to His Motion to Supplement His §2255 Petition (Docket No. 191), and Petitioner's Second Supplement to His Motion Under §2255 (Docket No. 190), IT IS HEREBY ORDERED that:

1) Petitioner's Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255 (Docket No. 152) is **DENIED**;

2) The Court finds that there are no grounds to issue a certificate of appealability;

3) The Clerk of the Court shall mark this case as **CLOSED**.

BY THE COURT:

_____
HERBERT J. HUTTON, J.